

WILLIAM B. HATCHER,  
appellant,  
  
v.  
  
U. S. POSTAL SERVICE,  
agency.

DOCKET NUMBER  
CH07528410332

Date: MAY 13 1985

On October 2, 1984 the appellant filed a petition for review of the initial decision issued on July 13, 1984 affirming the agency action of removing him from his position of Mail Handler. The petition was filed approximately six weeks after the expiration of the time period within which such a petition was to be filed. See 5 C.F.R. § 1201.114(b). The appellant was provided with an opportunity to provide evidence or argument to show good cause why the petition should not be dismissed as untimely filed. Based upon our review of the appellant's submission in this regard, we find that the appellant has not shown good cause for the delay in filing his initial petition, and that petition is hereby DISMISSED as untimely filed. See Alonzo v. Department of the Air Force, 4 MSPB 262, 264 (1980); cf. Schamel v. Department of Transportation,

12 MSPB 268 (1982) (where the appellant alleges that she was out of town when her petition was due and the record does not indicate the date of her departure or return, she has not established excusable neglect).

In a submission filed subsequent to his petition for review, the appellant informed the Board that he had secured a new representative and he contended that the untimely filing of his initial petition should be excused because his former representative had misrepresented himself as an attorney and had provided untimely, ineffective and incompetent representation. By order issued on January 22, 1985 the Board denied the appellant's motion to remand his appeal for a new adjudication but the Board provided the appellant with an opportunity to submit a supplemental petition and to present additional evidence or argument to show good cause for the Board's waiver of its regulatory deadline for filing a petition for review. See 5 C.F.R. §§ 1201.113(d) and 1201.114(b). Upon review of the appellant's submission in response to this order, the Board finds that the appellant has not shown good cause for the Board to accept the supplemental petition as timely filed and the supplemental petition is hereby DISMISSED as untimely filed, Johnson v. Department of the Treasury, 721 F.2d 361 (Fed. Cir. 1983) (an appellant is responsible for the deficiencies of his chosen representative). See also Sofio v. Internal Revenue Service, 7 MSPB 493 (1980). Additionally, we note that even if the Board were to accept the supplemental petition as timely filed, the appellant has shown no error in the presiding official's credibility findings and other evidentiary findings to warrant full review of the record. Weaver v. Department of the Navy, 2 MSPB 297 (1980).

This is the final order of the Merit Systems Protection Board in this appeal.

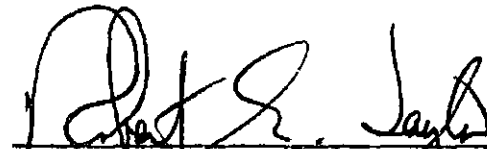
The appellant has the statutory right under 5 U.S.C. § 7702(b)(1) to petition the Equal Employment Opportunity Commission (EEOC) for consideration of the Board's final decision with respect to claims of prohibited discrimination. The statute requires at 5 U.S.C. § 7702(b)(1) that such a petition be filed with the EEOC within thirty (30) days after notice of this decision.

If the appellant elects not to petition the EEOC for further review, the appellant has the statutory right under 5 U.S.C. § 7703(b)(2) to file a civil action in an appropriate United States District Court with respect to such prohibited discrimination claims. The statute requires at 5 U.S.C. § 7703(b)(2) that such a civil action be filed in a United States District Court not later than thirty (30) days after the appellant's receipt of this order. In such an action involving a claim of discrimination based on race, color, religion, sex, national origin, or a handicapping condition, the appellant has the statutory right under 42 U.S.C. § 2000e5(f) - (k), and 29 U.S.C. § 794a, to request representation by a court-appointed lawyer, and to request waiver of any requirement of prepayment of fees, costs, or other security.

If the appellant chooses not to pursue the discrimination issue before the EEOC or United States District Court, the appellant has the statutory right under 5 U.S.C. § 7703(b)(1) to seek judicial review, if the court has jurisdiction, of the Board's final decision on issues other than prohibited discrimination before the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The statute requires at

5 U.S.C. § 7703(b)(1) that a petition for such judicial review be received by the court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:

  
Robert E. Taylor  
Clerk of the Board

Washington, D.C.